

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

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Applicant's or agent's file reference P62519PC00	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/E 03/00118	International filing date (day/month/year) 03.09.2003	Priority date (day/month/year) 10.09.2002
International Patent Classification (IPC) or both national classification and IPC G01B3/10		
Applicant MARKERITE TRADING LIMITED et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 7 sheets, including this cover sheet.
- ☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).
- These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 10.02.2004	Date of completion of this report 30.09.2004
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Beyfuß, M Telephone No. +49 89 2399-2725



**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/E 03/00118**

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-14 as originally filed

Claims, Numbers

1-14 as originally filed

Drawings, Sheets

1/8-8/8 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/E 03/00118**

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	4, 5, 7-9, 14
	No: Claims	1-3, 6, 10-13
Inventive step (IS)	Yes: Claims	4, 5, 7-9
	No: Claims	14
Industrial applicability (IA)	Yes: Claims	1-14
	No: Claims	

2. Citations and explanations

see separate sheet

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/IE03/00118

Reference is made to the following documents:

- D1: US-A1-2002011007
- D2: FR-A-2405461
- D3: US-A-5075977
- D4: DE-A-19646779
- D5: WO-A-9838471
- D6: US-A-5873174

Re Item V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Technical Field: Measuring devices with tape measure and pendulum
2. Prior Art

The documents D1-D4 which can be equally seen as closest prior art disclose measuring apparatuses comprising both a tape measure and a measuring pendulum. The tape measure of D5 has also a pendulum, but not for measurement. D6 discloses a tape measure with a wall bracket. For the details of D1-D6 see the following items 3 and 4.

3. Novelty (Article 33(2) PCT)

3.1 The subject matter of **independent claim 1** is not new:

D1 (Figs. 2, 3; [0023]-[0027]) discloses a measuring apparatus comprising a handle 18a having a tape holder (reel 18) and a pendulum 26 attached thereto. When the tape extends sideways and horizontally the pendulum hangs vertically downwards (button 32 allows free movement of the pendulum, see [0024]).

D2 (Figs. 1-3; p. 1, l. 34-p. 2, l. 35) discloses a measuring apparatus comprising a handle (in Fig. 3 the right housing of the pendulum unit is a "handle" as it can be gripped) having a tape holder (left unit in Fig. 3) and a pendulum 1, 2 attached thereto. When the tape extends horizontally the pendulum hangs vertically down.

D3 (Figs. 4, 13A; col. 6, l. 34-col. 7, l. 16; col. 11, l. 6-22) discloses a measuring apparatus comprising a handle (in Fig. 13A the left housing of the pendulum unit is a "handle" as it can be gripped) having a tape holder (right unit in Fig. 13A) and a pendulum attached thereto. The pendulum can be found in the parts 56 and 54 of Fig. 4 which shows in detail the left pendulum unit of Fig. 13A. In the latter figure the tape extends horizontally and the pendulum hangs vertically down.

D4 (Fig. 1; col. 1, l. 3-48) discloses a measuring apparatus comprising a handle (in Fig. 1 the housing of the battery 5 is a "handle" as it can be gripped) having a tape holder 7 and a pendulum 3 attached thereto. When the tape extends horizontally the symmetry line of the pendulum hangs vertically down.

D5 (Figs. 1-5; p. 6, l. 12-29) discloses a measuring apparatus comprising a handle (in Fig. 1 the housing of the tape measure is a "handle" as it can be gripped) having a tape holder (a reel) and a pendulum 10, 16 attached thereto. When the tape lies horizontal pendulum 10 with ring 16 (Fig. 5) forms a vertical pendulum.

3.2 The subject matter of the claims 2, 3, 6, and 10-12 is not new, either:

Claims 2, 3 and 6: D4 has a laser marker at its free end. Regardless of that the respective elements at the free end of the pendulum shown in D1 and D3-D5 can be also seen as marker (this term has a broad meaning). The pendulum of D2 comprises a plumb line adjustable in length. Moreover, to provide a scribe point, chalk, nail etc., to provide a plumb line, and to adjust the pendulum length would not contribute to an inventive step as these features are usual for plumb devices.

Claims 10-12: D2 (button 16) and D5 (the button shown in Fig. 1) disclose a tape lock. D1-D5 have a scale on a flat, curved or circular tape. Moreover, the particular features of claims 10-12 are absolutely usual for tape measures and would not contribute to an inventive activity.

3.3 The subject matter of independent claim 13 is not new, either: The devices of D1-D5 comprise all the parts of a kit according to claim 13.

3.4 **The subject matter of the claims 4, 5, 7-9, and 14 is new:** none of the particular features of these claims have been found in any of the documents D1-D5.

4. Inventive Step (Article 33(3) PCT)

4.1 The subject matter of **claim 14** is not based on an inventive step: D1-D5 disclose a measuring apparatus or a measuring kit according to claims 1 and 13. To provide an additional wall bracket to retain the free end of the tape is well known in applications of tape measures. For example, D6 (col. 2, l. 7-22) clearly indicates the respective advantages (no further person and no length compensation is needed) thereby rendering the use of a wall bracket in combination with a tape measure (see Fig. 8 of D6) obvious to a skilled person. An inventive step is thus not seen in combining the tape measures or kits of D1-D5 with a wall bracket.

4.2 **The subject matter of the claims 4, 5, and 7-9 is based on an inventive step:**

Claims 4 and 5: There was no indication found in the available prior art to use a multi-part or telescopic rod to provide an easy length adjustment.

Claim 7: The particular construction defined in this claim was not rendered obvious by the available prior art, either. The ball-socket mount allows the pendulum to freely pivot in a stable manner whereas the measuring pendulum of prior art devices is either restricted to one rotational degree or does not pivot in a stable manner.

Claims 8 and 9: There is no indication in the available prior art, either, to construct the tape holder rotatable on the handle about a vertical axis. This seems to allow a more flexible use of the measuring apparatus. Starting from D1-D5 it is a significant and non-obvious design modification.

5. Industrial Applicability (Article 33(4) PCT)

The subject matter of the claims 1-14 is industrially applicable, eg. for dimensional measurements in the field of constructing buildings.

REMARKS

1. The claims are unclear (Article 6 PCT) concerning the following points:
 - i) **Claim 1** seeks to define the apparatus for which protection is sought in terms of the use of the apparatus. The feature "such that....downwards" can be achieved or not depending on the way a user grips the apparatus.
 - ii) In **claim 1** it is unclear which feature (the tape holder and the pendulum or the pendulum) is attached to which other feature (the measuring apparatus, the handle or the tape holder). Moreover, the tape is not part of the apparatus.
 - iii) The term "tape holder" used in the **claims 1, 8 and 9** is to be understood as a means holding a tape. In the description (p. 2, l. 8-10) it is tried to define another (unusual) meaning, namely a housing with tape inside. Respectively clarified claims would explicitly define in the claims a housing with a tape.
 - iv) **Claims 13 and 14** define or include an ensemble of parts without clearly defining any relation or interaction between these parts. The subject matter of this claim is thus unclear. Moreover, an invention has to be a combination of features, each being known as such (otherwise the invention would be unclear), in a reasonable relation and interaction with each other to provide a technical effect. Simply collecting known elementary parts in a "kit" without having any clear relation to each other would thus not considered as inventive.
2. The claims are not provided with reference signs (Rule 6.2(b) PCT).
3. Independent claim 1 is not in the two-part form (Rule 6.3(b) PCT).
4. The documents D1-D4 are not cited in the description (Rule 5.1(a)(ii) PCT).